IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1189 OF 2005

Prashant Shantvan Shinde ...Petitioner

vs.

The State of Maharashtra & Ors. ...Respondents

Ms Smita Rajendra Kadu for the Petitioner
Ms R.M.Gadhvi,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 30,2005.

P.C.:

1. On the last date the Counsel were put to the notice that this Writ Petition will be heard today finally. Rule. Learned A.P.P. waives service. Taken up forthwith for hearing.

2. The Petitioner made an application for grant of parole under Rule 19 of the Prison (Bombay Furlough and Parole) Rules, 1959. The Application was made on the ground that the Petitioner's mother was sick. The said application was rejected by the Competent Authority i.e. Divisional Commissioner, Pune by order dated 5th November 2004. There are three reasons given by the said Authority. The first reason is that the earlier when the Applicant was enlarged on furlough leave, he did not surrender in time and he was arrested by the police after a period of 5 years from the date of expiry of earlier furlough leave granted in his favour. The second ground is that the Petitioner's wife is in a position to take care of the Petitioner's mother and the third

ground is that the Authority is of the opinion that the surety offered by the Petitioner is a resident of Chakan, District Pune and therefore he may not be willing to take responsibility of the Petitioner.

3. For challenging the said order, an Appeal was preferred by the Petitioner before the State Government. By order dated 14th February 2005 the said Appeal has been dismissed.

4. The learned Counsel for the Petitioner submitted that one of the grounds given in the order of Divisional Commissioner is that the Applicant did not surrender on expiry of earlier furlough leave granted in his favour. A submission was made that under Rule 4 the said ground is available for rejecting the Application for furlough leave and the said ground cannot be pressed into service for rejecting an application for parole. Reliance is placed on a decision of this Court a reference to which will be made at a later stage. The learned Counsel for the Petitioner further submitted that the availability of the wife of the Petitioner to look after the mother of the Petitioner is no ground to reject the Application.

5. The learned A.P.P. submitted that considering the conduct of the Petitioner, no relief can be granted in favour of the Petitioner as the Petitioner was absconding for a period of 5 years.

6. I have considered the submissions. A reference will have to be made to the decision of this Court reported in 2004 ALL MR (Cri) page No.746 (Harikesho Shriram Gadhwe Vs. State of Maharashtra & Ors.). In the case before this Court the application for parole was rejected on the ground that the Petitioner was in the habit of surrendering late. This Court in paragraph 5 of the said decision held thus :

"5. Insofar as the case pending against the Petitioner is concerned, there is no mention of any pending case in the affidavit in reply. **As far as the ground of overstaying is concerned, that is a ground, which will be applicable for release in furlough under Rule 4 (10) of the Prison (Bombay Furlough and Parole) Rules, 1959, if the Petitioner was required to be arrested. However, in my view, that cannot be a ground for rejecting the parole, which is sought on the ground of illness of the son of the petitioner under Rule 19 of the Rules.**" (Emphasis supplied)

7. In view of the said decision and in view of the provisions of Rule 4 (10) of the said Rules of 1959, the application for parole could not have been rejected only on the ground of overstaying. Similarly, the application could not have been rejected on the ground that the wife of the Petitioner is available to take care of the mother of the Petitioner.

8. The Application for parole leave was made by the Applicant on 21st August 2004. Considering the lapse of time, the said Application will have to be considered afresh by the Divisional Commissioner in the light of observations made by this Court.

10. Hence, I pass the following order :

i) The impugned orders dated 5th November 2004 and 14th February 2005 are quashed and set aside.

ii) The Divisional Commissioner, Pune will decide the Application made by the Petitioner on 21st August 2004 for grant of parole afresh in the light of observations made in this order.

iii) The Application shall be considered and decided by the Divisional Commissioner, Pune within a period of 30 days from the date of production of authenticated copy of this order.

iv) Rule is made partly absolute in above terms.

. Parties and concerned Authority to act upon an authenticated copy of this order.

JUDGE